

**UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

JESSE M. YARCLAY,

Plaintiff,

v.

DR. L. AVERITT et al.,

Defendants.

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Case No. CIV-22-445-G

ORDER

Plaintiff Jesse M. Yarclay, a federal prisoner appearing pro se and proceeding *in forma pauperis*, filed a Complaint (Doc. No. 1) alleging deprivations of his constitutional rights against multiple federal officers. In accordance with 28 U.S.C. § 636(b)(1), the matter was referred to Magistrate Judge Gary M. Purcell for initial proceedings.

On July 8, 2022, Judge Purcell issued a Report and Recommendation (“R. & R.,” Doc. No. 11), recommending that this action be dismissed on screening for failure to state a claim on which relief may be granted. *See* 28 U.S.C. §§ 1915(e)(2)(B)(ii), 1915A(b)(1). Plaintiff timely submitted an Objection (Doc. No. 13) to the R. & R, as well as a Letter (Doc. No. 12).

Pursuant to governing authority, the Court reviews de novo the portions of the R. & R. to which specific objections have been made. *See United States v. 2121 E. 30th St.*, 73 F.3d 1057, 1060 (10th Cir. 1996); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3). Having conducted this de novo review, the Court finds as follows.

In the R. & R., Judge Purcell addressed Plaintiff's factual allegations and the applicable standards of review. Judge Purcell concluded that Plaintiff's claim for violation of the Fourteenth Amendment should be dismissed because such claims are properly brought against federal officers pursuant to the Fifth Amendment. *See* R. & R. at 3-5 (citing *Greene v. Impson*, 530 F. App'x 777, 779 n.3 (10th Cir. 2013)). Judge Purcell further concluded that Plaintiff's remaining claims should be dismissed because no damages claim for the alleged deprivations is available under *Bivens*,¹ which is the decision that "authorize[s] a damages action against federal officials" for certain constitutional violations. *Egbert v. Boule*, 142 S. Ct. 1793, 1799 (2022); *see* R. & R. at 5-14.

In his submissions, which the Court construes liberally due to Plaintiff's pro se status, Plaintiff does not specifically dispute any of Judge Purcell's findings or conclusions. Rather, Plaintiff presents additional factual allegations in support of his legal claims and affirms that he is seeking to bring his claims pursuant to *Bivens*. *See* Pl.'s Obj. at 1-2; Pl.'s Letter at 1-2. Nothing in Plaintiff's Objection or Letter provides a basis to reject Judge Purcell's conclusion regarding Plaintiff's inability to pursue these claims pursuant to *Bivens*.

CONCLUSION

Accordingly, the Court ADOPTS the Report and Recommendation (Doc. No. 11) in its entirety. This matter is DISMISSED without prejudice.²

¹ *Bivens v. Six Unknown Named Agents of Fed. Bur. of Narcotics*, 403 U.S. 388 (1971).

² Plaintiff's requests to amend and for appointment of counsel are denied as moot.

A separate judgment shall be entered.

IT IS SO ORDERED this 27th day of September, 2023.



CHARLES B. GOODWIN
United States District Judge